

**United States Court of Appeals**  
**FOR THE EIGHTH CIRCUIT**

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No. 03-3637

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United States of America,

Appellee,

v.

Geraldo Lopez-Topete,

also known as Abel De La Paz-Barrios,

Appellant.

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Appeal from the United States  
District Court for the  
District of Minnesota.

[UNPUBLISHED]

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Submitted: July 6, 2004  
Filed: July 26, 2004

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Before MELLOY, HANSEN, and COLLOTON, Circuit Judges.

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PER CURIAM.

Geraldo Lopez-Topete appeals the sentence imposed by the district court<sup>1</sup> after he pleaded guilty to one count of interstate travel in aid of unlawful activity, in violation of 18 U.S.C. § 1952(a)(3). In a brief filed under Anders v. California, 386 U.S. 738 (1967), Lopez-Topete challenges the denial of a downward departure motion based on diminished mental capacity. This argument amounts to an attack on the district court's discretionary refusal to depart downward, which in the

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<sup>1</sup>The Honorable James M. Rosenbaum, Chief Judge, United States District Court for the District of Minnesota.

circumstances of this case is unreviewable. See United States v. Gonzalez-Ramirez, 350 F.3d 731, 734 (8th Cir. 2003).

Having reviewed the record independently under Penson v. Ohio, 488 U.S. 75 (1988), we find no nonfrivolous issues. Accordingly, we affirm. We also grant counsel's motion to withdraw.

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